5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF WASHINGTON 9 10 TERESA FARRIS; WARDELL 11 BRAXTON; GIOVANNI KINSEY; NO. CV-14-05083-SAB 12 GUADELUPE MONTEJANO; THOMAS 13 EDDINGTON; PAUL McVAY; FRANK 14 MURILLO; RICHARD VINSON, and all ORDER DENYING 15 other people who are similarly situated, PLAINTIFFS' MOTION FOR 16 Plaintiffs, TEMPORARY RESTRAINING **ORDER** 17 v. 18|| FRANKLIN COUNTY, SHERIFF 19|| RICHARD LATHI and CAPTAIN RICK 20 LONG, 21 Defendants. 22 23 Before the Court is plaintiffs' Motion for a Temporary Restraining Order, 24 ECF No. 4. Specifically, plaintiffs request a temporary restraining order (TRO) 25 barring the Franklin County Jail from chaining prisoners to fixed objects for any 26 period of time and for any reason. Plaintiffs also request that the Franklin County 27 Jail be ordered to immediately place Mr. Richard Vinson in an appropriate 28

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therapeutic setting. Unfortunately, at present, there is no proof in the record of service on defendants.

Under Federal Rule of Civil Procedure 65, a TRO may be issued without notice to the adverse party or its counsel only if: "(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required." Fed.R.Civ.P. 65(b)(1). Although the restrictions imposed under Rule 65 are stringent, they "reflect the 10 fact that our entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard has been granted both sides of a dispute." See Granny Goose Foods, Inc. v. Brotherhood of Teamsters & 13|| Auto Truck Drivers, 415 U.S. 423, 438–439 (1974). Accordingly, there are "very 14 few circumstances justifying the issuance of an exparte TRO." Reno Air Racing Ass'n Inc. v. McCord, 452 F.3d 1126, 1131 (9th Cir.2006) (courts have recognized 16 a "very narrow band of cases in which ex parte orders are proper"). For example, notice may be excused where it "is impossible either because the identity of the adverse party is unknown or because a known party cannot be located in time for a hearing." *Id.* Or, notice may not be required where providing "notice to the defendant would render fruitless the further prosecution of the action" because the adverse party is likely to destroy evidence. Id. Additionally, a temporary restraining order is generally restricted to its underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer. Brown Jordan Int'l, Inc. v. Mind's Eye Interiors, Inc., 236 F. Supp. 2d 1152 (D. Haw. 2002).

Plaintiffs allege that the Franklin County Jail regularly engages in the practice of punitive shackling of inmates to fixed objects for days on end, and that the jail shackles inmates who are on suicide watch to a fence located in the jail's

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booking area wearing only a smock. Plaintiffs also allege that inmates are denied access to mental health care. Although these allegations are troubling, the record before the Court does not warrant a TRO. The use of shackles by jails does not necessarily violate an inmate's civil rights. *See generally Spain v. Procunier*, 600 F.2d 189 (9th Cir. 1979), *Anderson v. County of Kern*, 45 F.3d 1310 (9th Cir. 1995). Defendants have not yet responded to the allegations and may not have been served with a copy of either the Complaint or the Motion for Temporary Restraining Order. Additionally, the record has no admissible evidence regarding the medical condition of any of the named plaintiffs, the reasons why shackles were used by the jail, how long such shackles were used, viable alternatives, the behavioral records regarding the plaintiffs, expert testimony regarding standard jail practices, or whether the plaintiffs have exhausted available administrative

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remedies or grievances, if any.

Plaintiffs' Motion for a Temporary Restraining Order is denied because they have failed to make an adequate showing, supported by admissible evidence, of immediate irreparable harm. *See* Fed.R.Civ.P. 65(b). Furthermore, because the plaintiffs seek to alter rather than preserve the status quo, a TRO is an inappropriate remedy.

## Accordingly, IT IS HEREBY ORDERED:

- 1. Plaintiffs' Motion to Expedite, ECF No. 5, is **GRANTED**.
- 2. Plaintiffs' Motion for a Temporary Restraining Order Re: Restraints, ECF No. 4, is **DENIED**.
- 3. Plaintiffs are directed to properly serve the Defendants.
- 4. Plaintiffs' counsel are directed to meet and confer with counsel for defendants, and then to contact the courtroom deputy to schedule a hearing for plaintiffs' motion for a preliminary injunction if desired.

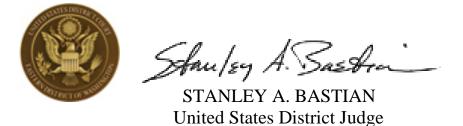
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**IT IS SO ORDERED.** The District Court Executive is hereby directed to file this Order and provide copies to counsel.

**DATED** this 5<sup>th</sup> day of August, 2014.



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